TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1921

No. [redacted]131

NEW BEDFORD DRY DOCK COMPANY, APPELLANT,

vs.

BLAKE G. PURDY, CLAIMANT OF THE STEAMER "JACK-O-LANTERN."

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED SEPTEMBER 1, 1920.

(27,877)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 13, 1920.

1 *Transcript of Record of District Court.*

No. 1821. In Admiralty.

NEW BEDFORD DRY DOCK COMPANY, Libelant,

v.

STEAMER "JACK-O-LANTERN."

The Libel in this cause was filed in the clerk's office on the 19th day of March, A. D. 1920, and was duly entered at the March Term of this Court, A. D. 1920, and is as follows

Libel

(Filed March 19, 1920; Amended July 8, 1920.)

To the Honorable the Judges of the District Court of the United States for the District of Massachusetts

The libel and complaint of the New Bedford Dry Dock Company against The Steamship "Jack-O-Lantern," her engines, boilers, tackle, apparel, furniture, equipment, etc., in a cause of contract, civil and maritime, alleges as follows

First. That libellant is a corporation organized and existing under, and by virtue of the laws of the Commonwealth of Massachusetts, and engages in the general business of shipwrights and calkers, with a shipyard located at Fairhaven, in the county of Bristol and the Commonwealth of Massachusetts.

Second. That Steamer "Jack-O-Lantern" is a vessel of the burden of one thousand gross tons, or thereabouts, is designed and is operated as an excursion and recreation steamer and is now and during pendency of process herein will be within the port of Boston and within the jurisdiction of this Honorable Court.

Third. That between the first day of June, 1919, and the first day of January, 1920, your libellant at the special instance and request of the master and owner of the said Steam-
2 ship "Jack-O-Lantern," said ship not being then, however, propelled by steam nor then named the "Jack-O-Lantern," undertook to make substantial alterations and repairs upon said vessel, and to furnish certain material and equipment in connection with said alterations and repairs in accordance with certain specifications, and copy of which is hereto annexed and marked exhibit "A," for the sum of Nineteen thousand ($19,000.00) Dollars; that in accordance with the terms of said undertaking, and in compliance with said specifications, your libellants made said alterations and repairs upon said vessel and supplied said materials

and equipment in connection thereto, whereby your libellants became entitled, as payment thereto, to the sum of Nineteen thousand ($19,000.00) Dollars.

Fourth. That your libellants had been paid on account of said Nineteen thousand ($19,000.00) Dollars, due for said work and materials, $8,200.00 on account thereof and have otherwise credited $350.00 on account; that there is a balance due of Ten thousand four hundred and fifty ($10,450.00) Dollars no part of which has been paid although duly demanded.

Fifth. That pending the performance of the work and the furnishing of the materials referred to above, your libellant, at the special instance and request of the master and owner of said ship, furnished and performed certain extra labor and supplied extra materials in connection with the alteration and repair of said ship, outside the terms of the specifications in the aforesaid contract. An itemized account of said extra labor furnished and performed and said extra materials supplied is hereto annexed and marked exhibit "B," that said extra labor furnished and supplied and said extra materials furnished as aforesaid, amounts to the sum of Eleven thousand eight hundred and ninety-three 09 100 ($11,893.09) Dollars; that said amount of Eleven thousand eight hundred and ninety-three 09 100 ($11,893.09) is a fair, reasonable, and customary charge for said labor and said material.

Sixth. That Five thousand one hundred and five 47 100 ($5,105.47) Dollars had been paid on account of said charges of Eleven thousand eight hundred and ninety-three 09 100 dollars $11,893.09) for extra labor performed and furnished and extra materials supplied, leaving a balance of six thousand seven hundred and eighty-seven 62 100 ($6,787.62) Dollars, no part of which has been paid although duly demanded.

3 Seventh. That pursuant to the provisions of an act of Congress, passed June 23, 1910, relating to liens on vessels for repairs, supplies and other necessaries, said sum of Ten Thousand four hundred and fifty ($10,450.00) Dollars and Six thousand seven hundred and eighty-seven 62 100 ($6,787.62) Dollars, totaling Seventeen thousand two hundred and thirty-seven 62 100 ($17,237.62) Dollars for said work, labor and materials aforesaid, constituting libellants' claims as aforesaid, became, and still is, a valid and subsisting maritime lien upon said vessel.

Eighth. That by reason of the premises there became, and still is due and owing from said vessel to the libellant, the sum of Seventeen thousand two hundred and thirty-seven 62 100 ($17,237.62) Dollars with interest thereon from the first day of January, 1920.

Ninth. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libellant prays that process in due form of law according to the course and practice of this Honorable Court in causes of

Admiralty and Maritime jurisdiction issue against the said Steamship "Jack-O-Lantern," her engines, boilers, tackle, etc., and that all persons having or claiming any right, title or interest in said Steamship "Jack-O-Lantern" be cited to appear and answer upon oath all and singular the matters aforesaid; and that this Honorable Court be pleased to decree to your libellant the amount of its claim as aforesaid, together with interest and costs, and that said Steamship "Jack-O-Lantern" be condemned and sold to satisfy the same and that your libellant may have such other and further relief as in law and justice it may be entitled to receive.

NEW BEDFORD DRY DOCK COMPANY,
By M. L. GILBERT,
President.

FRIEDMAN & ATHERTON,
GEO. R. FARNUM,
Proctors for Libellant.

COMMONWEALTH OF MASSACHUSETTS
Suffolk, ss:

March 18, 1920.

Then personally appeared the above named Mark L. Gilbert, President of said New Bedford Dry Dock Company, and made oath that the foregoing statements by him subscribed are true to the best of his knowledge, information and belief.

Before me,

GEO. R. FARNUM,
[SEAL.] *Notary Public.*

4 (Original Contract.)

EXHIBIT A.

Specifications.

All iron rails and pieces of rails set on runway in middle of hull, to be removed. Cord in middle of hull to be fared even with deck from the forward to the stage. Deck to be fared suitable to receive flooring. Hull to be drydocked.

Shaft Logs: Two shaft logs made in two pieces about ten feet long, to be about 14" by 14" filled in on the outboard and as per drawing. Lead sleeves of suitable thickness and large enough to receive a 5 inch shaft. Two transoms fitted over top and bolted to floor timbers with 7/8" iron bolts.

Rudder Ports: To be built square one on each side of hull, of three inch white pine, fifteen inch openings for a fourteen inch rudder post.

Rudder Post and Blades: White oak 14" stock about 11 feet long. Blade six foot wide from centre of stock. Blades 12" at top and 9" at bottom. Oak 9" by 9" back extending above blade 8". Tiller white oak 7" by 7" forward and fitted around stock with tongue to

receive iron strap with lugs and screw bolts about 3′ and 6″ long.

Main Deck: Fared to receive 7/8″ flooring of maple. This floor about 150′ by 29′ and 11″.

Studs: Uprights for Maine house, 6″ by 6″ planed to 5¾″ square. Ten feet long spaced 60″ on centres. Fastened to cords with two ¾ 2 blunt bolts 13″ long.

Beams: Of main house 3″ by 10″ crown 3″, planed to sides let into studs full size and fastened to studs with two carriage bolts of one half inch stock. Clips on inside of main house under beams to run entire length, will by 3″ by 10″, planed two sides. Stringer for turnbuckle rods to run entire length with scarfs 24″ long. Will be 4″ by 6″ planed on four sides. Plates for turnbuckle rods placed on stringer will be of ½″ oval iron, 3″ by ¾ 2 by 8″ long, fastened with two dog nails. 7/8″ iron turnbuckle rods placed on alternate beams as close as can be worked to beams, running through a plank, 2¾″ by 7″, placed on ends of main beams entire length as shown on plan. Angle iron gussets 3″ by 4″ by ⅜″ placed on alternate beams, fastened with 4½″ screw bolts in beams and uprights. Also on lag screw into beam as shown on plan.

Seats: Brackets for seats of two inch spruce, planed on 2 sides with one turned leg to each bracket, spaced 30″. Seats to be covered with ¼″ by 1¾″ oval faced yellow pine, with ¾″ openings. One strake of yellow pine, 3″ by 8″, planed two sides with rabbit, to be placed on top of cords and against stanchings of main house. This will be bolted with ⅝″ bolts, 16″ long into cords, and two ½″ bolts into each stud 7″ long. Sheathing on main house to be 1¾″ by 5¾″ matched cypress, fastened with 20 penny nails. Care must be taken to make the seam between the cord and the 3″ by 8″ plank water tight. Deck ceiling on top of main house to be 1¾″ by 7¾″, matched pine, planed end beaded on bottom side.

Upper House: To be built on main house about 125 feet long by about 18 feet wide, about 8 feet high in the clear. Sills to be built of yellow pine, about 4″ by 8″, fastened through sheathing and into main beam with ⅝″ by 16″ blunt bolts. Studs to 4″ by 5½″ morticed into sill and plate. Plates to be 4″ by 6″ morticed to receive tenons of studs. Studs to be placed 54″ on centres. Beams to be 2¾″ by 5″ crown 3″, spaced 36″ on centres, let into plates 2 inches, cutting plate only. Overhang to be about 7″. Sheathing to side of house to be 7/8″ by 3″ matched and beaded on one side. Vertical stanchion pieces 1¼″ by 3″ to be placed between studs, extending from floor to window stool. Sheathing to be screwed on to these. Sheathing to top of house will be 7/8″ by 3½″, on side beaded, fastened with 12 penny nails and covered with number 5 hard duck fastened with galvanized tacks. Brackets to each beam and stud to be made as shown on plan, 2¾″ thick. About thirty foot space in centre of upper house to be sheathed clear up. On one side there shall be booths installed using 7/8″ sheathing for partitions with seat on each side and table in centre. This can be either hard pine or cypress. The part of the main house deck from upper house sill to edge of overhang to be covered with number 4 hard duck, fastened with galvanized

tacks. Four scuppers in each side of top house connected and drained to top of main house. 8 scuppers on each side of main house connected and drained to deck. Pilot-house to extend full length of upper house about ten feet deep, with regulation pilot-house windows, wheel, and of the gear type pattern. All steering gear to be connected and to operate satisfactor-y as shown on plan.

Flagpoles: Four flagpoles of suitable size and height with hinged joints.

Room: In the forward end of the upper house, back of the pilot house a room ten feet wide will be partitioned off to be used as an office, with doors and windows of suitable size. Aft of this room there shall be a ladies' room, with an opening from the floor of the upper house. This room will have installed, two toilets and a wash-stand connected overboard. There shall be two stairways in the front of the boat, leading from the lower deck to the upper deck, and two in the after end of the boat leading up into the inside of the upper house. There shall be two check rooms, ladies' and gents' toilets on the lower deck, drained overboard, as shown on plan. Band stand as shown on plan. Stage with special room in rear as shown on plan. Engine room and boiler house to be built aft of main house; of suitable size and strength, with doors and windows of suitable size. Deck and bulk heads to be taken out to receive boiler and engine. Hatch in forward end of hull for ventilation. Gratings to be put up to receive life preservers and fire buckets. Opening in forward end of house to be as near as plan or picture as possible.

Rudder Skeg: To be of white oak, 10" x 10", fastened and fitted according to plan, or in the same practical way as the shaft log. All engine beds, pump beds and boiler foundation to be installed. Coal bunker to be made of matched spruce on each side, to hold about ten tons each. All floor around boiler and engine to be planked over and covered with two inches of cement clear through under coal bunker.

Main House Shear: The main house shall have a straight shear, as the hull has about a three inch raise in the centre. Every other stanchion of the main house shall run up six feet and fastened with plate and top timbers to upper deck house with a clamp under top timbers and a clamp to form rail with wire of suitable size from guard rail to deck of main house. Any other items omitted on the carpenter work will be carried on as of plan.

Painting: Hull to receive two coats of green paint above water line, one coat of copper paint below water line. All other woodwork to be finished with two coats of white paint. Top of upper house to have one coat of lead color and one coat of green. Lead color on all other canvas.

Davits: There shall be four davits, *four* on each side of the hull of suitable size to handle a lifeboat that will accommodate 15 persons each. These davits will be placed to suit Superintendent.

On the after end of the hull where the planking has started; this planking to be refastened after the rudder ports go in. Also on the after end of hull there shall be a piece of timber put on clear

across hull as shown on plan. Any refastening to be done on account of shaft logs being put in to be taken care of and fastened in workmanship manner. In case hull is launched overboard before propeller wheels and sternbearings are installed, hull must be again pulled on railway for the installation of this machinery. Work to begin as soon as hull reaches plant.

Dance Floor: This floor to be laid even and scraped and sanded, and given one coat of wax.

At the back of the band stand there shall be a smooth sheathing to run the full length of the stand up the side wall on the same curve as the gussets, about three feet outside of a line from the front of the grandstand. This to form a sounding shell.

6 (MEMORANDUM.—By agreement of counsel, itemized account of extra labor and materials, marked Exhibit "B," and Interrogatories, referred to and annexed to the foregoing libel, are here omitted.

JAMES S. ALLEN,
Clerk.)

At the same term, to wit, May 26, 1920, the following Claim was filed:

Claim.

(Filed April 3, 1920.)

Libel having been filed against the above vessel but process of arrest not having issued, comes Blake G. Purdy, of Boston, in said district, and says that he together with other owners are the true and bona fide owners of said vessel and he is the managing owner and agent of all said owners and entitled to possession of said vessel and prays that on filing stipulation for costs and to meet the decree in said cause, he may be allowed to answer and defend said libel on behalf of himself and said owners.

BLAKE G. PURDY.

Subscribed and sworn to before me this 3rd day of April 1920.
GEO. L. DILLAWAY,
Notary Public.

My Commission expires Mar. 28, 1924.

Stipulation to the Action.

Also on said third day of April, A. D. 1920, personally appeared Blake G. Purdy, of Boston, in the District of Massachusetts, managing owner and claimant of said steamer and produced for surety Fidelity and Deposit Company of Maryland. And the said Blake G. Purdy and the said Fidelity and Deposit Company submitting themselves to the jurisdiction of this Court, bound themselves, their heirs, executors and admin-strators, sucessors or assigns, jointly and severally, in the sum of eighteen thousand dollars, unto the

said libellant, that the said Blake G. Purdy shall abide by all orders and decrees, interloctutory or final, of the court, and shall pay the amount of the final decree of the court, and all sums of money that he shall be ordered to pay by the final decree of the court, whether it be in this or any appellate court.

Also at the same term, the following Answer was filed:

7 *Answer.*

(Filed May 26, 1920.)

And now comes the claimant, and for answer says:

First. He admits the allegations of the first paragraph of the libel.

Second. He admits the allegations of the second paragraph of the libel.

Third. The claimant says that prior to the 28th day of May, 1919, he, for himself and other owners, purchased a certain scow or carboat, being a bare hull without cabin or motive power, and for the purpose of turning the same into a steamship, now the "Jack-O-Lantern," made a contract with the libelant to complete said vessel, said contract being as follows:

"I have been over the plans carefully and will do the carpenter work to complete the job; furnish all lumber, hardware, nails, iron, turnbuckles, paint, canvas for roof, steering wheel, cut shaft holes, install rudders and rig steering gear complete, install toilets as shown, build all stages, bandstand, check room, seats, furnish wire netting for upper deck, etc. for $19,000.

This bid means to build the steamer complete as authorized with exception of machinery which is to be an extra if you want us to do it.

We will take stock to the value of 20% of our bill in your company and would want payments on the balance as work advanced. You deliver hull here and accept her here when completed."

That the libelant did make alterations and repairs upon the said vessel and supplied materials and equipment in connection therewith under the terms of the said contract and the claimant admits that the libelant became entitled as payment therefor to the sum of $18,650., the amount set forth in said contract, less allow-
8 ances for certain work not done, amounting to $350.00. Other than as above admitted he denies all the allegations of the third paragraph of the libel.

Fourth. The claimant says that the libelant has been paid on account of said contract the sum of $14,505; that the claimant is also entitled to a credit on account of said contract of $144.56 for certain iron rails taken from said vessel by the libelant and sold, and a further credit of $271.62 for certain pipe and fittings furnished to the libelant by the claimant at the libelant's request, and a further

credit of $3,730, for stock shares in said vessel, being 20% of the amount of the libelant's bill, and in accordance with the terms of said contract, making a total paid to the libelant of $18,651.16. Other than is herein admitted, all the allegations of the 4th paragraph are denied.

Fifth. The claimant denies that the libelant furnished or performed any labor or supplied any materials outside the terms of the contract and specifications at any request or at a special instance of the claimant, and the claimant further denies all other allegations of the 5th article of the libel; and further answering says that if the libelant furnished any extra labor or material as set forth in said fifth article, that so far as the same is not included in the contract between the claimant and the libelant, it was furnished voluntarily, and without any request on the part of the claimant, and the claimant further says that he is ignorant as to the charges set forth in said Exhibit B., and calls upon the libelant to prove the same, if material.

Sixth. The claimant denies that the sum of $5,105.47 has been paid to the libelant on account of the libelant's Exhibit B., for extra labor performed and furnished, and materials supplied, and denies that any balance is due to the libelant for or on account of said matters.

9 Seventh. The claimant denies the allegations of the seventh paragraph of the libel in the manner and form as therein set forth, and denies that the sums therein set out as due or any other sums are due from the claimant or the said steamship.

Eighth. The claimant denies that there is due and owing to the libelant the sum of $17,237.62, with interest as alleged, or any other sum.

Ninth. The claimant says that all and singular the premises are true, but denies the admiralty and maritime jurisdiction of this honorable court, and denies that the allegations of the libel are true except so far as herein admitted.

Wherefore, the claimant prays that this libel be dismissed with costs.

BLAKE G. PURDY.

DISTRICT OF MASSACHUSETTS,
Suffolk, ss:

Personally appeared before me the above subscribed Blake G. Purdy, and made oath that the statements in the above answer and the answers to the interrogatories annexed hereto are true to the best of his knowledge, information and belief, before me

GEO. L. DILLAWAY,
Notary Public.

My commission expires March 28, 1924.

(MEMORANDUM.—By agreement of counsel, answers to interrogatories, annexed to the foregoing Answer, are here omitted.

JAMES S. ALLEN,
Clerk.)

This cause was thence continued to the present June Term, A. D. 1920, when to wit, June 24, 1920, said cause comes on to be heard on the matter of jurisdiction and is fully heard by the court and on the second day of July, A. D. 1920, an Opinion of the Court is announced, ordering decree to be entered dismissing libel for lack of jurisdiction.

On the eighth day of July, A. D. 1920, a Motion to Amend libel is filed and allowed by consent.

On the twenty-first day of July, A. D. 1920, the following Final Decree is entered:

10 *Final Decree.*

(July 21, 1920.)

MORTON, *J.:*

This case came to be heard on so much of the answer as sets up lack of jurisdiction for the reason, as alleged, that the contract sued upon was not of such character as to create a maritime lien, and upon such facts as were orally agreed upon by counsel in open court at the hearing all of which so far as deemed material are set forth in the opinion of the Court filed herein, and was argued by counsel and after consideration, it is hereby ordered, adjudged and decreed that the libel be dismissed for lack of jurisdiction.

By the Court,

ARTHUR M. BROWN,
Deputy Clerk.

From the foregoing final decree the libelant claims an appeal to the Supreme Court of the United States and gives good and sufficient security that it will prosecute its appeal to effect and answer all damages and costs if it fail to make its plea good, and said appeals is allowed accordingly.

Opinion of the Court.

July 2, 1920.

MORTON, *J.:*

This case was heard on so much of the answer as sets up lack of jurisdiction for the reason, as alleged, that the contract sued upon was not of such character as to create a maritime lien. The facts, which are simple, were orally agreed on by counsel in open Court at the hearing, and are as follows:

The "Jack-O-Lantern" was originally a car-float of the usual type, something over two hundred feet long, with neither motive power nor steering gear, and having two lines of track on her single deck

The claimant bought her and proceeded to convert her into a steamer to be used for amusement purposes. The tracks were removed, the deck relaid to make a dancing floor, a large house, or super-structure, was built enclosing most of the deck and containing a dance-hall, rooms, balconies, etc. Steering apparatus and a steam plant of the propeller type for propulsion were also installed.

11 For the purpose of carrying out these changes the contract now before the Court was made between the claimant and the libellant. It covers, generally speaking, all the wood-work involved in the changes above outlined. The libelant did not install the power plant but it did prepare the vessel for it. The scow was towed to the libellant's yard for the work to be done. The engine and boilers were there installed. As they were not yet in working condition when the vessel left the libellant's yard, she was towed away. The contract and specifications are as stated in the pleadings.

The present question is, whether, upon the foregoing undisputed facts, the contract was one for repairs and supplies such as creates a maritime lien. It is too late now to question, in a court of first instance at least, the rule that a contract to construct a vessel does not give rise to such a lien. In rebuilding operations the test is whether the identity of the vessel has continued or has been extinguished. It would serve no useful purpose for me to discuss the cases referred to in argument by the libellant. The matter turns, as I view it, upon a question of fact; and upon the facts stated I think it clear that the identity of the car-float which was delivered to the libellant was completely lost by the conversion into an amusement steamer under the contract in suit. It is true that the hull is substantially unchanged; but mere identity of hull is not sufficient to preserve the identity of the vessel.

(McMaster v. One Dredge, 95 F. R. 832; The Dredge A, 217 F. R. 617, 629, 630.) The "Jack-O-Lantern" with her dance-hall, rooms, and power-plant, self-propelled and able to manœuvre, is an essentially different vessel from the car-float which furnished the hull.

Decree dismissing libel for lack of jurisdiction.

Libelant's Petition for Appeal.

(Filed July 21, 1920.)

To the Honorable Justices of The District Court in and for the District of Massachusetts:

12 Your petitioner, the New Bedford Dry Dock Company, in the above entitled cause, would respectfully represent and show that in the above entitled cause pending in this court, there was entered at the June term, 1920, a final decree greatly to the prejudice and injury of your petitioner, which said decree is erroneous and inequitable in many particulars.

Wherefore, in order that your petitioner may obtain relief in the premises, and have opportunity to show the errors complained of, your petitioner prays that it may be allowed an appeal in said cause

to the Supreme Court of the United States and that the proper orders touching the security required of it may be made.

NEW BEDFORD DRY DOCK COMPANY,
By GEORGE R. FARNUM,
Its Proctor.

Allowed
J. M. MORTON,
U. S. D. J.

Libelant's Assignment of Errors.

(Filed July 21, 1920.)

Now comes the libellant, the New Bedford Dry Dock Company, in the above entitled cause and having claimed an appeal to the Supreme Court of the United States from the final decree entered herein dismissing the libel for lack of jurisdiction, files this its assignment of errors:

(1) That the Court erred in deciding that the contract or contracts sued upon were not of such character as to create a maritime lien.

(2) That the Court erred in deciding that the work performed by the libellant was not of such character as to create a maritime lien.

(3) That the Court erred in deciding that the identity of the vessel, a car-float, upon which the work was performed, was completely lost by its conversion into an amusement steamer, and that the libel should be dismissed for lack of jurisdiction.

(4) That the Court erred in entering a decree dismissing the libel for lack of jurisdiction.

Wherefore your libellant prays that said decree may be reversed.
By its Proctor,

GEORGE R. FARNUM.

13 *Bond on Appeal.*

(Filed and Allowed July 21, 1920.)

Know all men by these presents, That I, New Bedford Dry Dock Company, a Massachusetts corporation having a usual place of business at Fairhaven in said Commonwealth of Massachusetts are held and firmly bound unto Blake G. Purdy of Boston, Suffolk County, Massachusetts in the full and just sum of two hundred and fifty ($250) dollars to be paid to the said Blake G. Purdy his certain Attorney, Executors, Administrators, or Assigns; to which payment well and truly to be made we bind ourselves, our Heirs, Executors, and Administrators, jointly and severally, by these Presents.

Sealed with our seals, and dated the eighth day of July in the year of our Lord one thousand *eight* hundred and twenty.

Whereas lately at a District Court of the United States for the District of Massachusetts in a suit in admiralty depending in said Court between New Bedford Dry Dock Company and the Steamer "Jack-O-Lantern," her engines, etc. a final decree was rendered against the said New Bedford Dry Dock Company and the said New Bedford Dry Dock Company having obtained an Appeal to remove the said cause to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Blake G. Purdy citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now the condition of the above obligation is such, that if the said New Bedford Dry Dock Company shall prosecute its said Appeal to effect, and answer all damages and costs, if it fails to make its plea [illegible] above obligation to be null and void; otherwise to remain in full force and virtue.

NEW BEDFORD DRY DOCK COMPANY. [SEAL.]
By MARK L. GILBERT,
Pres.

Signed, sealed and delivered in presence of
GEORGE R. FARNUM.

Approved; and sureties waived.
GEO. L. DILLAWAY,
Proctor for Claimant.

July 21, 1920.

Approved
J. M. MORTON, JR.,
U. S. District Judge.

14 *Agreement as to Record.*

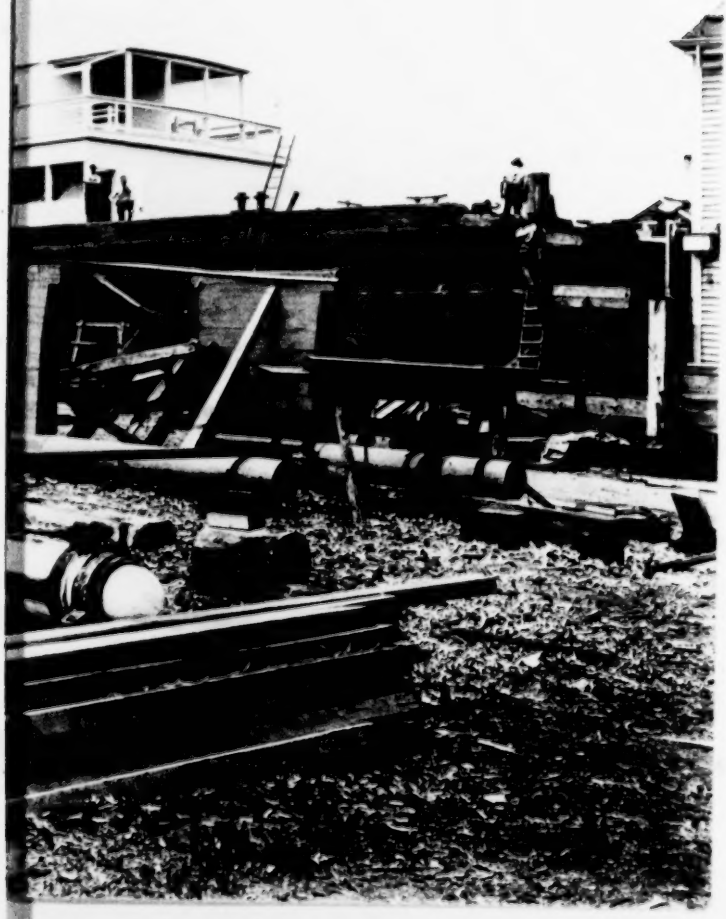
(Filed July 27, 1920.)

It is hereby agreed that Exhibit "B," consisting of an itemized statement of extra labor furnished and performed and extra materials supplied, annexed to the libel, the interrogatories annexed to the libel and the claimant's answers to the said interrogatories, may be omitted from the record on the appeal to the United States Supreme Court, the same not being material to the issues raised on said appeal.

GEORGE R. FARNUM,
Proctor for Libellant.
GEO. L. DILLAWAY,
Proctor for Claimant.

LIBELLANT'S EXHIBIT 1.

(Here follows photograph.)



15 *Citation on Appeal.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Blake G. Purdy, of Boston, Massachusetts, Claimant of Steamer "Jack-O-Lantern," Designed and Operated as an Excursion and Recreation Steamer at the Port of Boston, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, in the city of Washington, D. C., on the twenty sixth day of August next, pursuant to an Appeal duly obtained from a decree of the District Court of the United States for the District of Massachusetts, wherein the New Bedford Dry Dock Company, a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts, engaged in the business of shipwrights and caulkers, with a shipyard located at Fairhaven, County of Bristol, Commonwealth of Massachusetts, appellant and you are appellee, to show cause, if any there be, why the said decree, entered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable George W. Anderson, Circuit Judge duly assigned to hold the District Court of the United States for the District of Massachusetts this twenty seventh day of July, in the year of our Lord one thousand nine hundred and twenty.

G. W. ANDERSON,
United States Circuit Judge (Acting in the Absence of Judge Morton).

16 *Acknowledgment of Service of Citation on Appeal.*

Service of the within citation is hereby acknowledged.

GEO. L. DILLAWAY,
Proctor for Claimant and Appellee.

17 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, James S. Allen, Clerk of the District Court of the United States for the District of Massachusetts, certify that the foregoing is a true copy of the record and all proceedings in the cause in admiralty entitled, No. 1821, New Bedford Dry Dock Company, Libelant, v. Steamer "Jack-O-Lantern," in said District Court determined, the opinion of the Court, dated July 2, 1920, the Petition for Appeal, the Assignment of Errors, the Bond on Appeal, the

Agreement as to Record, and also the original Citation issued upon the appeal of the libelant, with the Acknowledgment of Service thereon

In Testimony Whereof, I hereunto set my hand and affix the seal of said District Court, at Boston, in said District, this twenty-first day of August, A. D. 1920.

[Seal of the United States District Court, Massachusetts.]

JAMES S. ALLEN,
Clerk.

Endorsed on cover: File No. 27,877. Massachusetts D. C. U. S. Term No. 520. New Bedford Dry Dock Company, appellant, vs. Blake G. Purdy, claimant of the Steamer "Jack-O-Lantern." Filed September 1st, 1920. File No. 27,877.

Office Supreme Court, U. S.
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CLERK

Supreme Court of the United States.

No. 520. October Term, 1920.

NEW BEDFORD DRY DOCK COMPANY,
APPELLANT,
v.
BLAKE G. PURDY, Claimant of the Steamer "Jack-O-Lantern."

Motion to Advance Case and Memorandum in Its Support.

GEORGE R. FARNUM,
40 Court Street, Boston, Mass.
Attorney for Appellant.

LEE M. FRIEDMAN,
30 State Street, Boston, Mass.
Of Counsel.

ADDISON C. GETCHELL & SON, LAW PRINTERS, BOSTON.

Supreme Court of the United States.

OCTOBER TERM, 1920.

No. 520.

NEW BEDFORD DRY DOCK COMPANY,
APPELLANT,
v.
BLAKE G. PURDY,
CLAIMANT OF THE STEAMER "JACK-O-LANTERN."

ASSENT TO ALLOWANCE OF MOTION.

The appellee, Blake G. Purdy, claimant of the Steamer "Jack-O-Lantern," hereby waives notice of the motion of the appellant to advance the case upon the docket of this Court for a speedy hearing, a copy of which motion and of the brief in support thereof follows hereafter, and hereby assents to the allowance of same on presentation.

GEO. L. DILLAWAY,
Attorney for Appellee.

BOSTON, December 27, 1920.

Delivery of a copy of the motion to advance the case and brief in support of the motion is hereby acknowledged.

GEO. L. DILLAWAY,
Attorney for Appellee.

Supreme Court of the United States.

OCTOBER TERM, 1929.

No. 520.

NEW BEDFORD DRY DOCK COMPANY,
APPELLANT,
v.
BLAKE G. PURDY,
CLAIMANT OF THE STEAMER "JACK-O-LANTERN."

MOTION TO ADVANCE CASE.

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

The appellant, New Bedford Dry Dock Company, respectfully shows to this Honorable Court as follows:

That this is a direct appeal under section 238 Judicial Code from a decree of the District Court of Massachusetts dismissing a libel in admiralty for lack of jurisdiction.

The appellant, a Massachusetts corporation, filed its libel against the Steamer "Jack-O-Lantern" to recover a balance of $17,237.62 claimed to be due for certain work done and materials furnished in the alteration and repair of said vessel.

The "Jack-O-Lantern" was originally a car-float of the usual type, something over two hundred feet long,

with neither motive power nor steering gear, and having two lines of tracks on her single deck. The appellee bought her and proceeded to convert her into a steamer to be used for amusement purposes. The tracks were removed, the deck relaid to make a dancing floor, and a large house or superstructure was built enclosing most of the deck and containing a dance hall, rooms, balconies, etc. Steering apparatus and a steam plant of the propeller type of propulsion were also installed.

For the purpose of carrying out these changes, the contract and specifications stated in the pleadings were made between the appellee and appellant. It covers, generally speaking, all the woodwork involved in the changes above outlined. The appellee did not install the power plant, but it did prepare the vessel for it. The vessel was towed to the appellee's yard for the work to be done. The engine and boilers were there installed. As they were not yet in working condition when the vessel left the appellee's yard, she was towed away.

The hull remained substantially unchanged, and the vessel may be again readily converted into the original car-float by simply removing the pavilions constructed upon its deck and the power plant. Attention is directed to the exhibit appearing after page 12 of the Record (photo of vessel in appellee's yard).

The District Court ruled that "the identity of the car-float was completely lost by the conversion into an amusement steamer under the contract in suit" and that the case was governed by "the rules that a contract to construct a vessel does not give rise to such a maritime lien, and that the 'Jack-O-Lantern' with her dance-hall, rooms and power plant self-propelled and

able to manoeuvre is an essentially different vessel from the car-float which furnished the hull," citing only *McMaster* v. *One Dredge*, 95 Fed. 832; *The Dredge A*, 217 Fed. 617, 629, 630; and entered a decree dismissing the libel for lack of jurisdiction.

The only question at issue in this appeal is the question of the jurisdiction of the Court below, or, in other words, the propriety of the ruling dismissing the libel for lack of jurisdiction.

Wherefore the appellant moves that, in accordance with Rule 32 of the rules of this Court, the appeal be advanced upon the docket of this Honorable Court for a speedy hearing.

NEW BEDFORD DRY DOCK COMPANY,
By its Attorneys,
LEE M. FRIEDMAN,
GEORGE R. FARNUM.

COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK, ss. BOSTON, December 29, 1920.

Lee M. Friedman, being duly sworn, deposes and says that he is counsel for the New Bedford Dry Dock Company, appellant; that he prepared the foregoing motion; and that the allegations therein contained are true to the best of his knowledge and belief.

Subscribed and sworn to, before me,

PERCY A. ATHERTON,
[seal] Notary Public.

Supreme Court of the United States.

OCTOBER TERM, 1920.

No. 520.

NEW BEDFORD DRY DOCK COMPANY,
APPELLANT,
v.
BLAKE G. PURDY,
CLAIMANT OF THE STEAMER "JACK-O-LANTERN."

MEMORANDUM FOR APPELLANT IN SUPPORT OF MOTION TO ADVANCE CASE.

The appellant urges in support of the allowance of its motion to advance the following considerations:

I.

The only question at issue in this appeal is the question of the jurisdiction of the Court below. The Court below dismissed the libel on the sole issue of lack of jurisdiction. The case therefore falls within the scope of Rule 32 of the rules of this Court, that, where the only question at issue is that of the jurisdiction of the Court below, the case will be advanced on motion.

II.

The case presents a novel and interesting issue of general public importance.

III.

The amount involved in this case is substantial. If the appeal is disallowed, the appellant will be obliged to resort to some remedy in the Courts of the Commonwealth of Massachusetts. His rights then may be substantially prejudiced if this appeal is disallowed after the lapse of a long period of time.

GEORGE R. FARNUM,
Attorney for Appellant.

LEE M. FRIEDMAN,
Of Counsel.